DOCUMENT RESUME

ED 194 275 RC 012 344

TITLE Bureau of Indian Affairs Implementation of Title XI of Public Law 95-561. Hearing Before the Subcommittee on Elementary, Secondary, and Vocational Education of the Committee on Education and Labor, House of Representatives, Ninety-Sixth Congress, Second Session (Washington, D.C., April 28, 1980).

INSTITUTION Congress of the U.S., Washington, D.C. House Committee on Education and Labor.

PUB DATE 80

NOTE 35p.: Not available in paper copy due to small print size.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.

DESCRIPTORS *Administration; *American Indian Education; American Indians; *Delivery Systems; Elementary Secondary Education; *Federal Indian Relationship; Government Role; Hearings; *Program Implementation; Tribal Sovereignty; Tribes; Vocational Education

IDENTIFIERS *Basic Indian Education Act; *Bureau of Indian Affairs; Congress 96th; Direct Line Authority

ABSTRACT

The House Subcommittee on Elementary, Secondary, and Vocational Education met on April 28, 1980, to hear testimony regarding progress made and problems encountered in implementing Title XI Amendments. Various representatives of Indian Affairs and Indian Education Programs testified on the following: recent changes in BIA education programs; transfer of the Bureau's Education programs to the Department of Education; the waiver of Indian preference; direct line authority; recognition of tribes; eligibility of students; and the closing of the schools at Fort Sill and Stewart. It was recommended that the Bureau's Education programs not be transferred at this time. Testimony indicated effective implementation of direct line authority in spite of disagreements. Witnesses made the following recommendations: (1) that duplication in the delivery of services be corrected; (2) that, on the advice of the Solicitors Office, the waiver of Indian preferences not be extended to new applicants; (3) that there be agreement between petitioning groups and recognized tribes before incorporating those groups into existing tribes; (4) that tribally approved geneological records be kept to facilitate student eligibility; and (5) that examination be made of the educational facet, the social facet, and the Indian economy facet as they affect the Indian community before closing a school. (CM)

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ED194275

BUREAU OF INDIAN AFFAIRS IMPLEMENTATION OF TITLE XI OF PUBLIC LAW 95-561

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HEARING

BEFORE THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, D.C., ON
APRIL 28, 1980

Printed for the use of the Committee on Education and Labor

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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BUREAU OF INDIAN AFFAIRS—IMPLEMENTATION OF TITLE XI OF PUBLIC LAW 95-561

MONDAY, APRIL 28, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 2261, Rayburn House Office Building, Dale E. Kildee presiding.

Members present: Representatives Kildee and Erdahl.

Staff present: Alan Lovesee, Majority Counsel; Scherri Tucker, Assistant Clerk; Lisa Worthington, Staff Assistant; Richard DiEugenio, Minority Legislative Associate.

Mr. KILDEE. The hearing will come to order.

This is a meeting of the Elementary, Secondary, and Vocational Education Subcommittee. The purpose of the hearing is to obtain testimony from the Bureau of Indian Affairs regarding its implementation of title XI of Public Law 95-561, the education amendments of 1978. That title, enacted after extensive committee investigations and close consultation with Indian tribes and educators, requires the Bureau to totally alter its education delivery system. The Bureau and the entire Indian community has devoted substantial resources to this effort for the past 18 months. During the period the subcommittee has conducted 3 days of hearings on BIA implementation.

In addition the staff have constantly monitored the Bureau's progress. We know there have been successes. However, there also seems to be some problems hampering full implementation. The hearing today will address both of these facets.

I am delighted this morning to welcome as our witnesses, Mr. Sidney Mills, the Acting Assistant Secretary for Indian Affairs; Mr. Rick Lavis, Deputy Assistant Secretary of Indian Affairs; Mr. William Hallet, Commissioner, Bureau of Indian Affairs; Mr. Earl Barlow, Director, Office of Indian Education Programs; Mr. Bud Shapard, Director, Federal Acknowledgment Project; and Ms. Patty Fulgham, Chief, Staffing Manpower Branch, Personnel Management, BIA.

Mr. Barlow, are you leading off?

STATEMENTS OF SIDNEY MILLS, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS; RICK LAVIS, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS; WILLIAM HALLET, COMMISSIONER, BUREAU OF INDIAN AFFAIRS; EARL BARLOW, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS; BUD SHAPARD, DIRECTOR, FEDERAL ACKNOWLEDGMENT PROJECT; AND PATTY FULGHAM, CHIEF, STAFFING MANPOWER BRANCH, PERSONNEL MANAGEMENT, BIA

Mr. BARLOW. Yes, sir.

Mr. KILDEE. Proceed in any order you determine among yourselves.

Mr. BARLOW. Mr. Chairman, I have prepared a statement for the record which I will submit and not read.

Mr. KILDEE. Yes, sir, it will be made part of the record in total.

[The statement of Earl Barlow for the record follows:]

PREPARED STATEMENT OF EARL BARLOW, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS

Mr. Chairman and members: I welcome the opportunity to appear before you today to discuss the progress of BIA education programs. BIA education has undergone many significant changes in the last year, chief among them being changes in fund distribution, in student accounting, and in direct line authority.

The major cause of these changes is, of course, the implementation of Title XI of Public Law 95-561. This act required development of regulations in eight areas, to which the BIA added a ninth, school boards. To date proposed regulations have been published for six of the nine areas, with final regulations published for five. Final regulations include the Johnson-O'Malley funding formula, transfer of Indian education functions, the Indian School Equalization Program, education personnel and policies. Nearing initial publication are impact aid, standards, student rights, and school boards, all currently undergoing technical review.

After publication of final regulations, the Office of Indian Education Programs has established the necessary mechanisms for implementing the regulations. Nine separate tasks have been identified to insure complete and prompt implementation. Revisions to the Departmental Manual for organization and delegations of authority are currently in the Secretary's Office for technical review. A new section of 62 BIAM has been released to implement the new education personnel system hiring under the new system will commence May 1 for the 1980-81 school year. Student accounting manuals and student count verification procedures are in use and all student counts have been certified. The entire Johnson-O'Malley regulations have been revised and are nearing initial publication for public comment. The management information system is partly operational at this time and should be fully operational on or before November 1, 1980.

A group of education and administrative personnel has been formed to develop and test administrative models for provision of support services to the Office of Indian Education Programs; a temporary BIA Manual Bulletin is in effect and establishes an interim operational system. Educational and dormitory standards are due for publication in May; a draft has already undergone field review prior to official publication of the initial regulations.

Aside from the Public Law 95-561 effort, we continue to operate 224 schools sering 43,341 students (average daily membership) in grades kindergarten through twelve. As mandated in Public Law 96-46, Chilocco and Seneca Indian Schools will cease operation on June 15, 1980.

Implementation of Public Law 95-471, the Tribally-Controlled Community College Act, is proceeding well, with final regulations having been published in November, 1979.

Greatly improving our internal Central Office operations is the fact that at last our staffing is almost up to strength. This has greatly increased our ability to respond to the needs of school and other field personnel.

In the future we will continue or efforts to improve the educational opportunities of Indian students and to facilitate Indian control of Indian affairs in all matters relating to education. We appreciate the assistance we have received from this Committee and the Congress. It will be our responsibility to insure that you and the Congress are made aware of our progress and needs as we move towards our

common goal of quality educational opportunities for Indian children, adults and Tribal governments.

Mr. Chairman, this concludes my statement.

Mr. BARLOW. I would like to reiterate that the basic goal of the Bureau of Indian Affairs is to continue to improve the educational opportunities of Indian students and Alaskan Natives and to facilitate Indian control of Indian affairs in all matters relating to education. Also at this time I would like to express our appreciation for the assistance the Bureau of Indian Affairs has received from this Committee and the Congress in carrying out the implementation of this new legislation. I will conclude my opening statement with that and would be pleased and happy to answer questions you might have.

Mr. KILDEE. Assistant Secretary Mills, would you like to make a statement at this time?

Mr. MILLS. No, Mr. Chairman.

I might say briefly that as you are aware I have been Acting Assistant Secretary since January and prior to that I spent a few months in the Bureau as Acting Commissioner prior to Commissioner Hallet's coming on board. And it was quite gratifying to me to see the effort put forth within the Bureau on this complicated piece of legislation. And I realize we do have a ways to go and we will be ironing out a lot of wrinkles so to speak in the months to come but I have complimented and continue to compliment the Bureau's employees for taking on such a task along with the cooperation of working with the tribes.

Mr. KILDEE. Thank you very much.

From the very beginning since this oversight committee was established by direction of Chairman Perkins, our role and goal, while conducting oversight to make sure congressional intent is carried out, has been to work in a cooperative manner with the Bureau of Indian Affairs to make sure those who should be served by these programs are served.

So we have worked toward and have received a good spirit of cooperation. Is there anyone else in the panel who would like to make an opening statement?

Mr. HALLET. Mr. Chairman, I would just like to reiterate to you and to Secretary Mills the commitment by this Commissioner to work in a very cooperative manner with the Office of Education and the Bureau of Indian Affairs in implementing the provisions of Public Law 95-561 and fulfilling the mission that is before us.

Mr. KILDEE. Thank you very much.

Rick, do you have anything you wish to add?

Mr. DAVIS. No, sir, you have heard enough from me.

Mr. KILDEE. Mr. Shapard has no opening remarks. We have been joined by Congressman Erdahl from the great State of Minnesota. He has been very active on this oversight committee and we appreciate his continuing interest.

Mr. ERDAHL. Thank you.

Mr. KILDEE. Do you have an opening statement you would like to make?

Mr. ERDAHL. I am just glad to be here and I am here to listen and learn.

Mr. KILDEE. Very good. We will get right into some specifics. I will address this question directly to the Secretary Mills and if any of you wish to add a response, you may feel free to do so.

The subcommittee is concerned about the recent decision you made interpreting the applicability of the new education personnel system section of Public Law 95-561 which establishes a tribal right to waive Indian preference in filling education positions. Would you describe for the record your final decision regarding the applicability of this section to new, potential, or current personnel or applicants?

Mr. MILLS. Mr. Chairman, on advise of our Solicitors Office we have taken the position not to extend the waiver of Indian preference to applicants who would be new coming on board. In addition to that though, the Office of the Assistant Secretary directed the Director of Indian Education to proceed with legislation to cover that issue.

Mr. KILDEE. Legislation to clarify the section to include new employees?

Mr. MILLS. To clarify so as to include employees and new employees coming on board.

Mr. KILDEE. As part of the right of the tribes to waive the preference?

Mr. MILLS. Yes, sir.

Mr. KILDEE. Since you referred to the statement of the Solicitor, I would like to enter that into the record at this point.

[The material to be furnished for the record follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., February 25, 1980.

Memorandum to: Director, Office of Indian Education Programs, Attn: Carol Baker.
From: Acting Associate Solicitor, Division of Indian Affairs.
Subject: Waiver of Indian Preference Under 25 U.S.C. 2011(f).

Questions have recently been raised regarding the scope of the Indian preference waiver granted with respect to BIA education positions under section 1131(f) of Public Law 95-561 (25 U.S.C. 2011(f)).

Section 1131(f) provides—

"Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section *respecting an employee not entitled to Indian preference* if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization. . . ." (Emphasis added.)

"Tribal organization" was defined in section 1131(f) as the recognized governing body of an Indian tribe *or* a local school board under section 1139 of Public Law 95-561, provided the school board "has been delegated by such governing body the authority to grant a waiver under [subsection (f)] with respect to such personnel action." "Indian preference laws" are defined under this section as federal laws, including 25 U.S.C. 472, which grant "a preference to Indians in promotions and other personnel actions," but doesn't include the Indian training and employment preference provisions of section 7(b) of Public Law 93-638.

It is clear from the face of the statute that the waiver of Indian preference under section 1131(f) is a limited waiver. Specifically, the Indian preference laws applicable to employment of Indians in the federal Indian service may be waived with respect to appointments, promotions and transfers relating to Bureau "education positions" only in favor of "an *employee* not entitled to Indian preference." Thus, when an Indian and a non-Indian are both applying for a Bureau education position at the local level, the Indian preference laws not be waived to hire the non-Indian unless the non-Indian is, at the time of such personnel action, an employee of the agency. To interpret section 1131(f) as a general waiver of the Indian preference laws would be to rewrite the statute by substituting "person" for "employee" or

ignoring the phrase defining the class of persons who may be hired under such a waiver.

Given the clear and unambiguous language of the statute, resort to the legislative history would be inappropriate. In fact, the legislative history is not extremely helpful. Comparison of the language of section 1131(f) with the waiver of Indian preference contained in the predecessor bills, though, clearly indicates that the scope of section 1131(f) is much more limited than the blanket waiver of Indian preference proposed by H.R. 9810, § 13(e), 95th Cong., 1st Sess., and section 1131(f) of H.R. 15 as passed by the House. The limitation of the Indian preference waiver can best be explained as the result of a compromise at conference between the Senate versions of H.R. 15 and S. 1753 (which would not have permitted any waiver of Indian preference) and the House version of H.R. 15 which allowed waiver of Indian employment preference laws without qualification.

It is therefore my conclusion that the Indian preference waiver in section 1131(f) should be strictly construed in the Bureau's regulations and that the scope of the Indian preference waiver under this section is limited to OIEP personnel action at the local level affecting non-Indian government employees.

HANS WALKER, Jr.

Mr. KILDEE. So you do expect that a recommendation for remedial legislation, a specific recommendation, will be sent to the Hill?

Mr. MILLS. Yes, sir.

Mr. KILDEE. When would we expect that to be ready?

Mr. MILLS. I might ask Mr. Barlow if he can give us a timetable.

Mr. BARLOW. I am rather new to the operations of the Federal Government but if the Assistant Secretary would instruct me to prepare such a request I will be very pleased to do so as expediently as possible.

Mr. KILDEE. Have you received the formal request yet to do that?

Mr. BARLOW. No, not formally.

Mr. KILDEE. But upon receiving the formal request you will prepare that?

Mr. BARLOW. Yes, sir.

Mr. KILDEE. Do you anticipate any insurmountable problems out in the field over such proposed legislation?

Mr. BARLOW. Mr. Chairman, in all candor, the issue of Indian preference is sensitive. However, I think the wording in this particular act whereby the option for waiver is reserved to the legal tribal entities or Alaskan villages I think will serve to eliminate any great concern that they have. And I think with that being made very evident it should help to alleviate any concern they might have.

Mr. KILDEE. I think that when Congress put this provision in the law we were very sensitive to Indian sovereignty and therefore, left that decision in the hands of the legitimate tribal authorities. So this would be an extension of their right to decide. And you feel that this extension of sovereignty would balance out any other difficulties that might arise?

Mr. BARLOW. Yes, sir. I think it is crucial that we certainly do inform the tribes and Alaskan native villages that this is their option. It is not something that is going to be forced upon them. They will make that decision.

Mr. KILDEE. Does counsel have any questions on that point?

Mr. LOVESEE. Mr. Chairman, I would just like to ask the Assistant Secretary when the request to proceed will go from your office to Mr. Barlow?

Mr. MILLS. I think we can do that, counsel, tomorrow.

Mr. LOVESEE. Thank you, sir. Thank you, Mr. Chairman.

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Mr. KILDEE. Mr. Mills, what is the status of the implementation of the provisions in section 1131 J and K of title XI relative to the crediting of leave earned in the Bureau by another Government agency when an employee transfers out of the BIA education personnel system to a civil service system. Has the Office of Personnel Management worked with you in implementing these sections?

Mr. MILLS. Yes sir, Mr. Chairman, to get specific on this it might be Mr. Barlow, if he isn't prepared, we do have some people from our personnel staff with us today.

Mr. BARLOW. Yes, sir, Mr. Chairman. At this time the issue concerning the transfer of leave for those employees who opt for the education contract personnel system has not been resolved. The Office of Personnel Management has informed us that we must make some type of allowance to the employee for the accumulated leave. And we asked Patty Fulgham from the BIA's personnel office to accompany us today. She has been working on this. And if you would like more detailed kind of information, Mr. Chairman, Ms. Fulgham can furnish that.

Mr. KILDEE. Yes, sir, why don't we take some time if on that Ms. Fulgham if you have something a little more detailed on that, please come forward.

Good morning. Pull up a chair.

Ms. FULGHAM. I am Patty Fulgham, Chief of the Staffing and Manpower Branch for the Bureau of Indian Affairs in the Division of Personnel Management.

The question came up in our original regulations where we had stated that the leave would be banked when an individual converted to the new system. OPM then advised us that we could not bank the leave, that if the individual had the leave they must be able to use it; that we would either give them a lump sum leave payment or if the leave is transferred then they must be allowed to use it.

We have gone back to our Solicitor's office. We went back to OPM first. We went to their General Counsel's office. And they reviewed their first findings and came up with the same findings. So we then went to our Solicitor's office and on Friday we received a memo from them stating the same position as OPM and suggesting that we take another look at our decision.

I haven't had a chance to talk to Mr. Barlow since we received that information late Friday afternoon.

Mr. KILDEE. Counsel, would you like to follow through on that?

Mr. LOVESEE. Mr. Chairman, thank you. What impact do you anticipate this will have on the new system, especially from the standpoint of school boards offering contracts to current employees transferring into the new personnel system?

Ms. FULGHAM. Well, the employees have a right to elect to go into that new system. I have no idea how many employees will go into it. The employees that we have been appointing since February of 1979 whom we started in making temporary appointments not to exceed September 30, 1980, those employees will either be converted or be dismissed from their jobs. So we will have a certain amount of leave.

But they will not have accrued much annual leave at that stage of the game because most of them are new to the Federal system

and they would only have their year's annual leave, which would be 13 days if even that much when they do convert.

Mr. LOVESEE. But with respect to older bureau employees who may elect to come into the new system have you received feedback from school boards or school personnel as to the willingness of the school boards to retire a large amount of leave with a lump sum payment?

Ms. FULGHAM. I have not.

Mr. BARLOW. I have not specifically, no. I am concerned, however, that it will have an impact, counsel.

Mr. KILDEE. What type of impact do you feel it would have on the system?

Mr. BARLOW. Well, I would assume that an employee who was considering converting would certainly have second thoughts if they could not bank this leave. I would say it would certainly cause them to look at it very, very carefully.

Mr. KILDEE. So you lean toward flexibility in allowing them to bank the leave?

Mr. BARLOW. Mr. Chairman, I was again under the impression that the legislation was quite clear on this. I thought that was the intent of the legislation and I still do. And again I think as the Office of Personnel Management reviewed it, they again informed us that it wasn't all that clearcut. You mentioned the Solicitor. Have you got an opinion from the Solicitor?

Ms. FULGHAM. Yes, sir, late Friday afternoon we received a memo.

Mr. LAVIS. I would like to comment. I read the opinion over the weekend. I have the impression, and I could be wrong in this, by reading the opinion I got the impression the Solicitor supported the concept it could be transferred if they converted from the previous system to the new system. They did suggest it would require change in our regulations as well as a further concurrence from OPM. But my impression from reading our Solicitor's opinion is they were supporting that effort to transfer the leave because their conclusion was it wasn't a change of service.

The law at the present time says if you leave the Federal service you give up your leave and get a lump sum payment. Our Solicitor is assuming that because you are moving from a new system to another system, even though you are a Federal employee, that you take that leave with you. We will submit the opinion to you and you can review it as well to see if we are in concurrence but that is my impression.

Mr. KILDEE. My own feeling is that the law is clear on that as, both of you have indicated, and I would concur in your judgment on that. I haven't read the opinion myself of the Solicitor but I think speaking as one Congressman, and as chairman of the committee's oversight effort that has reviewed the language, the language, that is clear, and I would accept the interpretation of Mr. Barlow and Mr. Lavis on that.

Do you have any questions at this point, Mr. Erdahl?

Mr. ERDAHL. Just a general one, Mr. Chairman, if I might. I think you and I share the importance of emphasizing a good educational program from preschool through graduate school for native

Americans. I think it an emphasis that we should continue to press.

Just a broad question for members of the panel if you care to respond, what has been the developing relationship between the Bureau of Indian Affairs and the new Department of Education? Is that coming ahead and moving along? Does anybody have any comments or reaction there? Do you see some changes or things that need to be changed? Maybe I am asking the wrong group this question.

Mr. MILLS. Mr. Congressman, I might respond to that. It is a massive piece of legislation. It was difficult to work some of the problems out from the early stages. Of course this came right on the end of implementing Public Law 96-638. But earlier in the session here I advised the chairman that I was proud of the employees both from the education side and on the Bureau's operations side of the efforts that have been put forth to implement this program. I indicated that we got some obstacles to hurdle yet but it was a good effort being put forward out in the field.

Mr. ERDAHL. Anybody else?

Mr. LAVIS. Yes, sir, Congressman. There is very little in terms of the relationship of the Bureau of Indian Affairs to the new Department. The new Department has certain responsibilities. As you know the Congress did on two occasions resolve an issue of whether or not the Bureau of Indian Affairs, education program ought to be transferred to the new department. It was not transferred. So we are proceeding to operate the program within the Department of the Interior.

But we have no official or legal relationship with the new department other than an ongoing discussion we have in terms of avoiding duplication of funding and those kinds of issues. There was a great deal of agreement and discussion in terms of implementing certain portions of Public Law 95-561 as well as Public Law 95-471, which was required by the act. But beyond that we have no legal relationship as such in terms of being directed or managed by the new Department.

Mr. ERDAHL. I am aware of this because it was a controversial bill and a controversial issue among our delegation from Minnesota, but I would hope that we would see an ongoing, maybe an intensified unofficial coordination between the activities of the new department and the Bureau.

It seems to me that makes sense.

Mr. BARLOW. Congressman, if I could also respond, today I have received the latest GAO report pertaining to an investigation they have done on the merits of such a transfer. And their recommendation is that it would not be appropriate at this time to transfer the Bureau's Education programs to the Department of Education. But I certainly do agree with what I hear you saying. And I have begun a series of meetings with the personnel over in the Department of Education to coordinate the efforts that they have in Indian education with the Bureau. And we are now beginning to move into a more formalized type of cooperation.

The new Department does expend sizable funds for the education of Indian children. We are anxious to see there is no duplication,

no overlapping, and that wherever possible we do coordinate these programs.

Mr. ERDAHL. Thank you very much.

Thank you, Mr. Chairman.

Mr. KILDEE. Thank you, Mr. Erdahl.

On this point the Congress made a very deliberate and conscious decision, to keep the BIA education programs within the BIA rather than transfer them to the new Department of Education. It was my own amendment and as time goes by I am even more convinced that I was correct. I think the umbrella type of programs provided by the BIA called for keeping the Education Service under the BIA.

However we also of course have an Office of Indian Education, which is title IV, in the new Office of Education.

What formal liaison has been established between your office and the OIE on this issue?

Mr. BARLOW. At the present time, Mr. Chairman, I have initiated meetings with Dr. Gerald Gipp, who is the Deputy Commissioner for Indian Education. And as you are aware, the new Department is reorganizing. I don't know at this time what the title of the position Dr. Gipp holds is going to be or where it is going to be located. But as I said before, we have begun a process now to formalize our liaison with DOE.

For example, I really do not feel there is a duplication of educational services to the children. I think where the duplication is is in the delivery of services. For example, if we could utilize the same parent committees, if we could utilize the same forms, I think it would be very well received by the Indian people who are deluged by a paper blizzard. And we could eliminate those kinds of paper duplications and putting our resources and funding into the actual programs for the children. And we have begun this.

I have also had a series of meetings with one of the Assistants to the Secretary to the Department of Education whereby we are talking long-range goals, objectives to insure that the Department of the Interior and the Department of Education, do all they can to insure that the services that go to these children have been coordinated and have been thought out.

Mr. KILDEE. Thank you.

Mr. ERDAHL. Could I bring up a point? Counsel handed me now a pamphlet which I had not seen before. It came to me after I asked the question. It is from the Comptroller General. It came out April 24, 1980, by the Comptroller General, "Report to the Chairman on Government Affairs, United States Senate" and asks "Should the Bureau of Indian Affairs continue to provide education services to Indian children?"

I wanted to bring that to your attention if you hadn't had the opportunity to see that before.

Mr. KILDEE. I believe this is a rather positive study.

Mr. ERDAHL. I have not looked at it at all.

Mr. KILDEE. We will keep it in the committee files rather than making it a part of the record. Thank you very much. I have some questions on personnel problems in general and I will direct these to Director Barlow. And others may wish to join in in the response.

What is the status of implementation of the new personnel system? What training, for example, has taken place? What is being planned.

Mr. BARLOW. The plan at the present time, Mr. Chairman, is to fully and completely implement the new personnel system by May 1, 1980. And I am pleased to report that the Commissioner and I have jointly signed off on a directive to the field indicating that this will be. And with this particular action I do not envision anything that will delay or hold up this process.

Mr. KILDEE. By May 1?

Mr. BARLOW. Of 1980. Now we have completed all of our training to implement the new system. They are all scheduled to be completed by April 30 I guess I should say. One of the areas that we are examining is as new people come on board in the field they in turn will have to be trained in this new system and we are prepared to do that prior to the opening of school next fall.

Mr. KILDEE. You answered both my questions. You have trained the present personnel and you are planning to train new personnel as they come in, prior to the opening of school?

Mr. BARLOW. Yes, sir.

Mr. KILDEE. When will local hiring under the new system begin?

Mr. BARLOW. May 1.

Mr. KILDEE. May 1? You are prepared to do the actual hiring at that point?

Mr. BARLOW. Yes, sir. We have all of the necessary information out to the field. We have the proper forms. They have been trained in how to do this. And henceforth all new education employees will be contract employees.

Mr. KILDEE. Well, I certainly feel all parties involved deserve to be commended for doing this in a very timely fashion. I am very pleased with this.

Mr. BARLOW. I might tell you, Mr. Chairman, that it was a gigantic undertaking. It is a new system. It is one that certainly has required a lot of cooperation on the part of all of the Bureau people. I think you are aware that the Assistant Secretary did decree that the Director would have line authority but we would share a common or shared support system. And I think this was the first supreme test of this shared support system in the area of personnel management.

Mr. KILDEE. Well, I think it is a good omen to do that. I am personally impressed and I am sure Chairman Perkins will be very pleased at your progress and your success in this area. Assistant Secretary Mills, under whose authority will the division handling the new education personnel system be placed; Director Barlow or Commissioner Hallet?

Mr. MILLS. At the present time it is under Commissioner Hallet's authority. I might ask Mr. Lavis to comment here. We are currently having a task force reviewing some of the administrative support services here.

Mr. LAVIS. The discussions are going on in developing some clearcut lines of delineation and cooperation. In answer to the question, the responsibility for personnel will remain with the Commissioner. We do not anticipate at this point transferring support service elements.

Mr. KILDEE. Thank you.

Mr. Erdahl.

Mr. ERDAHL. No questions, but just to echo the comments you have made that this is a positive effort I have seen and I am sure there was a lot of work and coordination and cooperation. And not only is it a good omen but I think it is a good product and a good result.

Mr. KILDEE. Thank you, Mr. Erdahl.

Counsel?

Mr. LOVESEE. No, sir.

Mr. KILDEE. Mr. Mills, under section 1126 line authority for Bureau of Education programs was to be transferred to the Director of the Office of Indian Education Programs, who is currently Mr. Barlow of course. While the regulations have been written, no actual transfer has taken place. Would you tell us why? What is the status of the assumption of line authority by Mr. Barlow?

Mr. MILLS. At the present time, Mr. Chairman, we have our departmental manuals sections 130 and 230 that are currently in the Department for review and approval. And as soon as we receive those back we will move forward on a formal basis but we are at the present time operating as if there is direct line authority from the Assistant Secretary's office to Dr. Barlow.

Mr. KILDEE. And you plan with these to make that actual transfer then?

Mr. MILLS. Yes, sir.

Mr. KILDEE. Any questions, Counsel?

Mr. LOVESEE. Mr. Chairman, if I might pursue that. You are acting as though there is direct line authority from your office to Mr. Barlow, is that right?

Mr. MILLS. Yes, sir.

Mr. LOVESEE. With respect to Mr. Barlow and the field, and that is at school positions, agency positions, and area positions, has there been implementation of line authority in that direction?

Mr. MILLS. I believe, Mr. Chairman, that we have gone forward with instructions to the field to that effect. I might ask Mr. Lavis if he can comment on how this is proceeding?

Mr. LAVIS. Yes, sir. We have applied direct line authority from the Assistant Secretary to the Director of the Office of Education Programs and we have also at our level assigned directives to the field to proceed to organize and operate as if it was a formalized factor. The problem at this point in the game is the approval of DM-130 and 230. And we will proceed on that basis initially.

We did find difficulty initially within the Department. We think we have clarified those issues within the Department.

Mr. LOVESEE. You mentioned a memorandum that you sent down. Would you describe that memorandum a little more clearly.

Mr. LAVIS. I ought to have it in front of me but I do not. I would simply state in fact first of all it is two memos. One established Mr. Barlow as having direct line authority between the Office of Assistant Secretary and the Director. And second, it was a general release which the former Assistant Secretary Gerard signed establishing certain delineations in organizations between other Bureau staff and the Education staff.

I would be happy to supply those for the record if you wish.

Mr. LOVESEE. If you will supply them for the record.

Mr. KILDEE. If you will supply those they will be made a part of the record of this hearing.

[The material to be supplied for the record follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C. June 21, 1979.

Memorandum to: Acting Deputy Commissioner, Director, Office of Indian Education Programs, Central Office Directors, Area Directors, Assistant Area Directors—Education, Management Improvement Office.

From: Assistant Secretary—Indian Affairs.

Subject: Implementation of Direct Line Authority.

As we all know P.L. 95-561, the Education Amendments of 1978, imposes significant and far reaching changes in the Bureau of Indian Affairs. Because of the impact of these organizational requirements, as mandated by law, I want to share with you the decisions we have reached regarding Direct Line Authority and the directions we are taking in implementing Direct Line Authority. It is my hope that in this way I can clarify and answer some of the questions being raised about the impact of P.L. 95-561.

Direct Line Authority

Upon enactment of P.L. 95-561 on November 1, 1978, the Office of the Assistant Secretary undertook a major program to implement P.L. 95-561. By utilizing Bureau and Trival representatives within 12 subject matter Task Forces this Administration emphasized broad public participation and involvement in developing the rules and regulations to comply with the statutory mandates. Such involvement, in my estimation, was absolutely essential in terms of developing Trival involvement in our educational program while maximizing Indian input in implementing P.L. 95-561.

One of the most critical elements of P.L. 95-561 is Direct Line Authority (Section 1126). Task Force 4 was assigned the responsibility for implementing Section 1126. The Task Force submitted, in March, a comprehensive decision document for my review and consideration. On April 2, I made the following decisions:

1. That the Director of the Office of Indian Education programs would report directly to me. To implement a policy of decentralization, the Director would, at his discretion, delegate his authority to Agency Superintendents for Education and to the three Presidents of our Post-Secondary schools.

2. That for fiscal year 1980 Area Offices continue to manage JOM and Higher Education programs and where appropriate, off-reservation boarding schools.

3. That Bureau support services would be shared between Education and other programs of the Bureau.

These decisions reflect my conviction that the Education Program needs to be given strong and continuing support by my office and by the Bureau. In addition, the decentralization of authority to the Agency level will, in my opinion, assure Indian control of education.

I recognize, however, that these decisions, both in regard to common support services, and Direct Line Authority, represent a departure from past Bureau practices and will pose significant challenges to the organization and its management. In this connection I have directed the Office of Indian Education Programs to proceed in a manner which is least disruptive to the Bureau and its ongoing programs.

As a result, the Director, Office of Indian Education Programs has already established a program for assuming the responsibility that P.L. 95-561 and my decisions has conferred upon him. His approach is to maximize cooperation with all elements of the Bureau *in a phased approach to be accomplished during fiscal year 1980.* In this connection, the Office of Indian Education Programs has designed a thorough plan for implementing, on an operational basis, the elements of P.L. 95-561 including Direct Line Authority. This effort should provide a strong management tool to guide us in making the necessary changes in our educational program.

More specific information and guidance will be announced following publication of the final rules and regulations governing Direct Line Authority which is expected in early July.

In regard to establishing common support services I have directed the Director, Office of Indian Education Programs and the Commissioner to work closely together in making the necessary changes. While I realize that this element is the most

difficult of all the procedures we are implementing as a result of P.L. 95-561 it is nonetheless one that can be achieved with cooperation.

In all of these major efforts, it is my firm intention to proceed in such a way that the overall organization of the Bureau of Indian Affairs will not be adversely affected but rather strengthened as a result of these decisions and the mandates of P.L. 95-561.

I hope this statement will be helpful to you. Its message is designed to indicate that we will proceed cautiously by working with the organization to minimize impacts. As additional information is developed it will be shared with you to keep you fully informed.

FORREST J. GERARD.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 13, 1979.

Memorandum to: Acting Deputy Commissioner, Director, Office of Indian Education Programs.

From: Assistant Secretary—Indian Affairs,

Subject: Implementation of Revised Line Authorities.

The changes in direct line authority which I outlined in a memorandum dated June 21, 1979, will become effective November 15, 1979. The following procedures are to be implemented on that date.

1. The Director, Office of Indian Education Programs, will report directly to me.

2. Those individuals currently titled Assistant Area Director (Education), Education Program Administrator, or equivalent, serving as the chief education staff person at the Area Office, will report directly to the Director, Office of Indian Education Programs.

3. Those individuals currently titled Education Program Administrators, located at an Agency Office and with responsibility for one or more Bureau operated schools or dormitories, will report directly to the Director, Office of Indian Education Programs.

4. Those individuals currently titled either Education Program Administrator or Education Specialist, located at an Agency Office as the chief education officer but with no schools or dormitories, or contracted schools or dormitories only, will report to the chief education staff person of the Area Office.

5. The presidents of the three post-secondary institutions (Haskell Indian Junior College, Southwestern Indian Polytechnic Institute and the Institute of American Indian Arts) will report to the Director, Office of Indian Education Programs.

6. Those individuals currently titled either School Superintendent or Education Program Administrator, in charge of an off-reservation boarding school, will report to that individual serving as chief education staff person at the Area Office.

7. Those individuals titled principal, supervisory guidance counselor, or equivalent, serving as the chief school supervisor of a Bureau-operated school or dormitory located in or adjacent to an Agency will report to the chief education staff person at the Agency Office. Where no education staff person exists at the agency, the school supervisor will report to the chief education staff person at the Area Office.

8. Position description amendments (DI 625's) are to be initiated to reflect the above changes in supervision; amendments should be processed immediately and reflect an effective date of November 15, 1979.

Undoubtedly, certain Areas or Agencies will have specific questions related to their unique situations. Such questions should be submitted immediately in writing to the Director, Office of Indian Education Programs, attention: Jerry Waddell, so that specific determinations may be made.

As you will note, current changes are in supervision only; phase in of changes in other responsibilities will take place throughout fiscal year 1980, with full implementation expected in fiscal year 1981. Your assistance in implementing these changes will be greatly appreciated.

FORREST J. GERARD.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., February 26, 1980.

Memorandum to: All employees.
From: Commissioner Of Indian Affairs, Director, Office of Indian Education Programs.
Subject: Implementation of Public Law 95–561.

Many employees have expressed concern about delays in implementing the provisions of Public Law 95–561, and several have commented on the lack of valid information concerning changes which have been made thus far. This memorandum explains some of the changes which have been approved thus far and discusses roles of BIA staff as a result of these changes.

Five final regulations have now been published in compliance with the Act. Your reading of these will facilitate an understanding of the changes proposed. We are now operating on the basis of these regulations, and your familiarity with them will perhaps reduce problems which normally occur when new legislation is being implemented. The following is a listing of the sections of the Act for which regulations are effective and the dates the final regulations were released.

Section of Public Law 95–561	Regulation 25 CFR	Title	Publication date
1130, 1133	Part 31a	Indian education policies	Oct. 9, 1979.
1126, 1127	Part 31b	Transfer of Indian education functions	Do.
1131, 1135	Part 31g	Education personnel	Nov. 8, 1979.
1128, 1129	Part 31h	Indian school equalization program	Oct. 26, 1979.
1102	Part 273	Education contract, Johnson O'Malley Act, Sec. 31—Distribution formula.	Feb. 11, 1980.

In addition to the final regulations, a notice on School Construction priorities was published on 5–22–79 in compliance with Section 1125.

One of the more significant changes which has been implemented is the direct line authority of the Director, Office of Indian Education Programs, over field education program operations. Both area and agency education program managers now report to the Director Office of Indian Education Programs rather than to an Agency Superintendent or to an Area Director. Both have also been delegated the authority of the Director through the release of 10 BIAM 6.

The Office of Indian Education Programs will continue to receive administrative support services from the Bureau in compliance with section 1126 of the Act and 25 CFR Part 31b Section 7(b)(3) and Section 9. The Bureau's administrative support staff will process administrative actions for agency, area, or Central Office education program staff just as they process actions for other BIA staff.

Because Public Law 95–561 did not modify administrative requirements (with the exception of permitting the hiring of certain education staff under a contract agreement) the procedures which have been followed for providing administrative support remain in effect. Actions requested by education program personnel must meet the same regulatory and statutory requirements as those in effect for actions requested by any other BIA official.

However, education program personnel to whom the Director, Office of Indian Education Programs, has delegated line authority are now able to approve requests for administrative actions without complying with previous requirements for approval surnames or signatures of Agency Superintendent or Area Directors. Bureau administrative support staff will process these requests in the same manner as they process those originating from an official exercising the authority of the Commissioner. We would like to caution both education and administrative support personnel that this does not permit the approval of any administrative action which is not compliance with applicable regulatory or statutory requirements.

We will be developing revisions to BIAM directives in the future to bring them into conformity with P.L. 95–561 mandated changes. Should you have any comments after the changes are made, we will appreciate hearing from you.

WILLIAM HILLITT,
Commissioner of Indian Affairs,
EARL J. BARLOW,
Director, Office of Indian Education Programs.

Mr. KILDEE. While the memorandum is a positive step, it seems that most field personnel are still awaiting some clearer mandates in this area. Some seem to feel that such a shift will not take place. The committee is aware that in several areas no change has occurred. What are you doing to see that as much local control as is consistent with reasonable management is transferred now?

Mr. LAVIS. I would answer part of that question and Dr. Barlow might want to respond further. But we have taken a number of steps both informally as well as formally without the approval of the DM-230 to proceed, to begin, to break out. Now there is no question in my mind and I think no question in this committee's mind, that direct line authority has been the most difficult issue we have had to grapple with in this legislation. We made it clear on the record and made it clear officially. And there is no doubt that an organization as broad and diverse as ours throughout this country is going to have some staff and field personnel who are going to find it difficult in terms of beginning to work these things through. But Dr. Barlow and his staff have worked long hours with their side of the House in terms of education personnel at the field level to make it clear what they expect.

Mr. Mills and former Assistant Secretary Gerard have expressed their views on this and particularly Assistant Secretary Mills on his behalf when he was the Acting Commissioner. He spent a great deal of time moving these issues forward in attempting to clarify it. Admittedly that isn't much in terms of having taken steps officially or maybe bureaucratically, but I think it indicates evidences at least in my own opinion, it indicates a commitment by this organization to implement fully what the Congress intended. And that is simply the Office of the Director of the Indian Education Programs was going to have authority and control over his programs in the field.

Now I realize the staff at the field level is quite naturally, because of their ties with the area office and that existing past structure, will shake a little at this and it will cause little heartbreak, but I think in the long run we understand where we are going.

Mr. Barlow, do you want to comment on that?

Mr. BARLOW. The crucial issue is the final adoption and approval of the DM-130 and the DM-230. And as the Assistant Secretary has informed the committee, they are under departmental review. These departmental manual provisions in their proposed format were sent to the union for their review April 21, 1980. We perceive that this might take about 30 days to resolve to see if they have any problems with them. But up until this time the Assistant Secretary did issue his directives on line authority and the Director of the Office of the Indian Education Programs has line authority in the programmatic areas.

The delegation did not include administrative or procurement kinds of authority. The Commissioner and I again have signed off on directives to the field informing the field that this certainly is in place. The Director of the Office of Indian Education Programs did issue a directive of delegation of authority to the field. I think part of the problem here is again this represents a very dramatic

change. And as such it is difficult to communicate all the way down through the field.

My honest observation is that overall it is working well. We have identified some areas, some situations where there has been some disagreement and some questioning of how the line authority is working without the DM-130 and the DM-230. But overall my judgment is that it is working effectively.

Mr. LAVIS. Mr. Chairman, I think the Commissioner would like to respond to this as well.

Mr. HALLET. Mr. Chairman, I would just like to state that the spirit of direct line authority has been accepted by both the Commissioner and the Director of Education. And I just want to advise you that from time to time the Director and I have both held council with our field staff regarding the spirit of cooperation in implementing direct line authority. I can recall on several occasions when some of his staff, in the eagerness to test their wings in direct line authority, would move in a certain direction and area office people would be a little reluctant, and we would end up getting on the phone and talking with both sides.

Mr. KILDEE. I would agree with you there is nothing more fundamental and more clear in the bill than the line authority. We made that as clear as possible. That was the fundamental decision that was made by the Congress. And I am happy to see you concur that is fundamental and you are implementing that right down to the local level. I think that was a decision that was so basic to the reform of the delivery of these educational services that we are certainly interested, as you are to see that this is carried out.

Congressman Erdahl.

Mr. ERDAHL. Thank you. I have no questions or comments.

Mr. KILDEE. Questions of counsel.

Mr. LOVESEE. No questions.

Mr. KILDEE. I will address this to Commissioner Hallet but others may also wish to answer these questions. Would you describe the work of your Federal acknowledgment project and why do you call it acknowledgment and not recognition?

Mr. HALLET. Mr. Chairman, the Bureau of Indian Affairs represents the Federal Government's principal point of contact in the government-to-government relationship with tribes. And in the process of recognition of tribes is the acknowledgment that a tribe does exist. In relationship to or in regard to responding further on the acknowledgment process I would like to defer to Mr. Saphard.

Mr. KILDEE. Mr. Shapard.

Mr. SHAPARD. Basically our mission is threefold. We process petitions from those groups which are interested in Federal acknowledgment as an Indian tribe. We recommend to the Assistant Secretary whether or not he should recognize or acknowledge the group as an Indian tribe and provide trust services. We also have a mission to locate and notify groups throughout the country that the process is available.

Mr. KILDEE. Again, in the past the term "recognized" has had a very significant meaning. Was there any reason why the word "acknowledgment" was put in rather than recognition or recognized?

Mr. SHAPARD. Yes, sir, there apparently was some litigation prior to the formulation of the regulations. And the lawyers were in confusion over exactly what they wanted it to mean. In the regulations itself however we equate acknowledgment with recognition. And an acknowledged tribe is a recognized tribe.

Mr. KILDEE. So it is not a hierarchy, one is not better than the other? They are equated clearly in the regulations.

Mr. SHAPARD. Yes, sir.

Mr. KILDEE. But you chose to use another word?

Mr. SHAPARD. Yes, sir.

Mr. KILDEE. Because of litigation?

Mr. SHAPARD. On advice of our solicitors we used "acknowledgment" instead of "recognition."

Mr. KILDEE. Do you know what the basis of their advice was?

Mr. SHAPARD. As it was explained to me there was confusion in at least some of the lawyers' minds. They were interpreting "recognition" to mean one thing or another rather than specifically a direct relationship with the Federal Government. They were apparently playing some legal games with it that I don't fully understand.

Mr. KILDEE. Vis-a-vis sovereignty, does acknowledgment have any lesser meaning than recognition?

Mr. SHAPARD. No, sir.

Mr. KILDEE. That is clear in the regulations?

Mr. SHAPARD. Yes, sir.

Mr. HALLET. From the understanding I have had on prior occasions the "acknowledgment" referred to the process that a group went through in that all groups may not become federally recognized at the end of that particular process. And I am not sure if that is the understanding. That is the understanding I had initially when I received a briefing on the Federal acknowledgment program.

Mr. KILDEE. You say acknowledgment then is a process, the end result which might be recognition or might not be recognition?

Mr. HALLET. Yes, sir.

Mr. KILDEE. So there is a distinction then?

Mr. HALLET. That is the impression I got.

Mr. KILDEE. Mr. Shapard.

Mr. SHAPARD. Well, we could in fact after we processed a petition and reviewed the group thoroughly, we could recommend that it not be acknowledged or recognized. If a group is recognized it has the same status and responsibilities that other federally recognized groups have.

Mr. KILDEE. But what I am trying to get at is this: You mentioned that acknowledgment is a process. A process is always something that has not been finalized yet, which means people are left twisting slowly in the wind. So I am still somewhat confused if it merely a process. If it is a process you are then in flux and have not yet achieved the goal or the end. Whereas if the process has been completed then you are no longer in the process.

So is it process or is it something that is finished?

Mr. SHAPARD. I think the regulations in 25 CFR 54.11 speak to that specifically if I may read them.

Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other Federally recognized tribes and entitled to the privileges and immunities available to other Federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes.

So once we recognize a group at least in my mind, and I assume in the Commissioner's, there is no question as to that group's status. It is a recognized tribe.

Mr. KILDEE. Could they then legally and in fact use the term "recognized" tribe after they have been acknowledged?

Mr. SHAPARD. [Indicated in the affirmative.]

Mr. KILDEE. I have the advantage or disadvantage of not being an attorney. I am confused as to why the attorneys may have suggested that you use the word "acknowledged" rather than the time honored term "recognition." Do you have any questions on that, counsel? He is an attorney.

Mr. LOVESEE. Mr. Chairman, I likewise suffer from the disadvantage of being an attorney and have no idea in the world why it was done.

Mr. ERDAHL. For the record, as you were asking the questions, the members of the panel were nodding their head. Maybe they would care to affirm or make a comment so we have something for the record.

Mr. LAVIS. Mr. Chairman, it seems to me we are really talking about two things. I mean I don't see a disagreement. I really don't. We have a process which we have established to handle tribal recognition issues that the Congress has had to deal with over the years. The Interior Committees on both sides have always been confronted with questions of recognition. And in some cases those legislative efforts have succeeded. Pasqua Yagui is an example. But I think the Congress expressed some concern over, are we being bombarded by these issues; do we have the capacity at this level of making some judgments of whether we ought to grant recognition status.

Some were easy because they were formerly recognized but maybe through the termination policy process lost the determination, Menominee being a classic example of that.

I think in response to that the Department moved rather swiftly to establish a process to deal with those petitions so that the Indian tribes, those tribes who consider themselves tribes and who felt they ought to be recognized and receive those Federal services, then had a point to go to present their case and the Department, the bureaucracy would have the capacity to make some judgment.

So I guess we called the process a Federal acknowledgment process. At the end of which if all the information is there which clearly shows there is an existing Government entity, a tribal culture, a history, anthropology, you name it, they would then be recognized as full members of a federally recognized tribe to receive all benefits and services under all the respective acts and statutes.

Mr. KILDEE. Just to wrap it up, in 1990 we will not be talking about recognized tribes and acknowledged tribes?

Mr. LAVIS. No, sir.

Mr. KILDEE. That is clear. I don't want to have the record indicate that there will be two types of tribes.

Mr. LAVIS. No, I think the ackowledgment is a process at the end of which you grant recognition status and they will be recognized tribes. Certainly it would do no one any good to have two classes of tribes so to speak. And I think that is the answer.

Mr. KILDEE. Is that the universal feeling at the table of those involved in this?

Mr. MILLS. Yes, sir.

Mr. SHAPARD. I drafted the regulations and at no point was I instructed or did I intend that it be any different than once they were recognized that they would always be recognized tribes.

Mr. KILDEE. They will be as recognized as any tribe that has been recognized for years. There is no distinction?

Mr. SHAPARD. That is correct

Mr. KILDEE. Thank you very much. I wanted to clarify that.

Mr. LAVIS. Of course you know if the lawyers get ahold of the testimony we may be out the window.

Mr. KILDEE. Well, it may have been a slow day in the Solicitor's Office and that is why they made up this word acknowledgment. How did this project start?

Mr. LAVIS. Very slowly, Mr. Chairman.

Mr. KILDEE. What precipitated it?

Mr. LAVIS. My impression at the time was it was a convergence of a number of demands. We were getting a lot of tribes or groups that had found some identity and wanted to achieve recognition. The Congress was being bombarded by requests to be legislatively recognized. And I think the convergence of that brought us to the conclusion we had to establish some process.

I am sure Bud can provide more details. He has been at it for quite some time.

Mr. KILDEE. Is any congressional action necessary after you have gone through the acknowledgment process and recognized a tribe? Is that it at that point? There is no need for congressional action subsequent to that?

Mr. LAVIS. I don't believe so.

Mr. SHAPARD. No.

Mr. KILDEE. How many applicants have there been for the process of acknowledgment and the end result of recognition? Mr. Shapard, have you the answer?

Mr. SHAPARD. We presently have on file petitions from 68 groups. The regulations mandate us to go out and locate groups, we have located approximately 260 groups, 185 of which we have definitely contacted. We have not been able to get contact with the approximately other 80. We don't know the viability of all of these groups in terms of being able to petition or whether they even exist now as tribes.

But we are now currently processing nine petitions and hopefully they will be done by the end of the year.

Mr. KILDEE. And none has been completed yet?

Mr. SHAPARD. We completed one. We have one in the signature process. We completed two and we have one in the typewriter now.

Mr. KILDEE. Those two will be recognized?

Mr. SHAPARD. One is recognized and one needs a signature.

Mr. KILDEE. How many people do you have working on this project?

Mr. SHAPARD. We have seven people. I am the only permanent employee. We have six others that are term appointments for 4 years.

Mr. KILDEE. How long do you anticipate it will take to complete this project?

Mr. SHAPARD. To explain my answer a little bit, we are projecting, and this is a guess, we are projecting that before the end of the project we will have 150 petitioners out of the 260 groups that we know of. Many petitioners will be frivolous or not really viable groups. But with the present staff and working at our present rate, which is about as fast as we can go, we will complete the project in the year 2003.

Mr. KILDEE. 2003. What year do you intend to retire?

Mr. SHAPARD. 2002, I guess.

Mr. KILDEE. What are your plans for bringing aboard more permanent employees for this project? Anyone want to respond to that?

Mr. SHAPARD. In fairness to all, to the Commissioner, we are arranging a briefing on the problem with this. He has not been briefed about the problem. What happened is when we set up the project we had 40 petitioners and we thought we could do it in 4 years. That is why we set up term appointments. We received a deluge of additional petitions since then, 28, and we are expecting a lot more.

Legal aid societies and a lot of other Federal agencies are helping these groups petition. And as the result we are getting a lot more interest than we ever thought we would.

That is why we set it up so short term. It ballooned on us. I have to take responsibility for that.

Mr. KILDEE. Do you call upon any other agencies of the government to assist you in making your determination? Do you look at the history of the group? How do you decide anthropological questions?

Mr. SHAPARD. Basically we have four groups looking at it independently. A sociologist, an anthropologist, two genealogists and a historian, each doing independent research on the group. They come together and arrive at a consensus as to whether or not the group meets the criteria in 25 CFR 54.7 of the regulations.

We believe that the process is so technical and so specialized that to draw from outside we would really have to review the outside research. We would have to do double work: Pay for outside work and review it.

Mr. KILDEE. You contract with people, such as historians?

Mr. SHAPARD. We have tried that but we end up having to go back and check their work to be sure. We want to make absolutely sure that the decisionmakers have the correct facts and have all the facts.

To do that we feel we have to do it ourselves.

Mr. KILDEE. Counsel.

Mr. LOVESEE. Mr. Chairman, allow me to provide Commissioner Hallet or Assistant Secretary Mills an opportunity to follow

through in response to your question with respect to personnel and priority on this project. I don't think they had an opportunity.

Mr. HALLET. Mr. Chairman and counsel, in view of the information that Mr. Shapard has presented today in regards to staff needs to accomplish a mission that has been accepted by the Bureau, it also entails an acceptance of findings regarding staff requirements for that. And to you and to Mr. Shapard's staff, to Mr. Mills, I want to say that we will review this; we will make a priority in determining what staff is necessary and appropriate to accomplish this particular objective.

Mr. KILDEE. Could you inform the subcommittee? Of course, it is very clear that Mr. Shapard was intending to meet with you. So, there is no need for any apology or because of the prior plans to meet to look at your manpower needs on this.

I certainly understand that to say no to a petition requires as much research as to say yes.

Mr. SHAPARD. We are projecting very heavy litigation rates on this. It is a very controversial project. Many of the recognized tribes are concerned we will have more tribes and no more money.

If we turn a group down, too, they will be upset about it.

Many states are concerned, too. So, we do want to do a bang up job on it.

Mr. KILDEE. I understand those who have recognition being nervous about recognizing those that do not fit the criteria that they had for "Indianess" or for tribal sovereignty.

So, I can see you would have problems saying yes or no. I know you must do deep research in both instances.

Mr. Erdahl.

Mr. ERDAHL. The question comes to mind how many recognized tribes or groups are there now? You mentioned 68 applicants and 200 and some known groups.

Mr. HALLET. I believe the number we have would be the 495 or 496.

Mr. ERDAHL. Then a couple of other questions come to mind. I think you mentioned at the present rate, it would be into the next century before this will be accomplished. Do you think a couple of things could be done? Maybe the process that you are going through should be reviewed.

Obviously, the thing Chairman Kildee talked about is the need for probably more staff to accomplish this goal. Are there possibilities that some of these other groups might be incorporated either in actuality or by process into the existing groups? Does anybody want to respond?

Mr. LAVIS. Well, I would be happy to respond, Congressman. In regard to the process, certainly I think having seen the case load explosion here, such as which almost was caused by the statute of limitation, then would again indicate we have to address personnel questions and how we are proceeding.

I think, notwithstanding how many people you have, it still takes a great deal of time. Sometimes the records are not in existence. But, you must determine whether or not there is a tribal government or a basis for recognizing a tribal government. Certainly the basis for doing that is what the Commissioner said.

In terms of whether or not you want to incorporate those groups into other existing tribes I think that is probably difficult for the very reason that those individuals who are striving to achieve some sort of identity want to do that for specific reasons and don't want to be assimilated within a group in which they would lose that kind of cultural identity.

There may be some tribes in California that might find it a better part of wisdom to combine. But, not knowing very much about that cultural base, I would tend to think finally in the final analysis, they would probably want to achieve some sort of separate identity.

Mr. ERDAHL. Maybe I am guessing wrong, but some of these groups may be more family groups than tribal groups.

Mr. LAVIS. Yes, I think that is the problem. Not necessarily the problem, but that is one element. Certainly the criteria we set out in the regulations very clearly indicate what we are looking for here is a long-term historical relationship as a tribal government.

But, when you are dealing with a family situation, that might not qualify. I think that takes a great deal of time to ferret that out. I think on behalf of Bud, the whole emphasis here has been to do as great a job of objective work as possible, to make sure you cross the "T"s and dot the "I"s to make sure we are on sound ground when we make that final decision.

Mr. KILDEE. Following through on that point, wouldn't joining a petitioning group with an existing recognized tribe touch the sovereignty, of that existing recognized tribe? Can we tell them that these petitioning groups are a member of their tribe? Isn't there a question of how the sovereign tribe determines their membership?

Mr. LAVIS. Yes, I would think that would be absolutely correct. It would have to be an act on both parts to agree to that. We wouldn't certainly impose that on an existing tribe, but again I think the issue is cultural identity in a tribal government base.

I would think most of those would not want to be assimilated with another tribe.

Mr. KILDEE. The tribe that might be asked to take these people or to whom it might be suggested that these people are kin, has the right under sovereignty to determine the membership of their tribe, do they not?

Mr. LAVIS. Oh, yes. I think we spend a great deal of time on this issue.

Mr. KILDEE. I think it is with good reason that tribes very carefully watch their sovereignty on this and do not want another body to tell them who is a member of their tribe.

Mr. SHAPARD. To my knowledge, right now, Mr. Chairman, there are only two groups in which that is a possibility and it is not us telling them, but rather, the petitioning group telling us that they should be members of another group.

So, that would be something we would look into and it would be entirely up to the recognized group.

Mr. KILDEE. The recognized group would have to really extend recognition?

Mr. SHAPARD. Or rather have to accept them into the membership. The two groups I am talking about now are maintaining that they are members of the tribe and have been excluded.

Mr. KILDEE. All right. I know that this whole question of sovereignity is an area that we approach very carefully and rightfully so. Very carefully. We will proceed onto BIA and title IV cooperation.

Mr. Barlow, we touched on this a little earlier, but I wanted to be more specific. Under the current Office of Indian Education plan to administer a new 506 for determining eligibility parents of students who claim eligibility, by virtue of affiliation with the federally recognized Indian tribe or band or group must provide a membership, enrollment or certification, or some other number.

If they do not have this information, the only way their child may qualify is by obtaining this number from the Bureau or receiving a letter of certification from the Bureau or the tribe. What cooperation has existed between your office and the OIE on this 506 eligibility question?

Mr. BARLOW. The Department of Education has not formally requested any involvement from the Bureau of Indian Affairs on this other than to make us aware of the form and their requirements. The 506 form in my judgment would place a great burden on the Bureau of Indian Affairs if these students who are seeking verification of their eligibility should suddenly turn to the Bureau for numbers and other kinds of documentation of their eligibility.

But, so far as the Department coming to me directing and requesting cooperation on this, it has not been done at this time.

Mr. KILDEE. Have you received any request's, from parents yet for help in determining their number so they can work with the OIE in establishing their eligibility?

Mr. BARLOW. Not at the central office level. Now, it could be that out in the areas in the field that this is certainly occurring, but it has not occurred at this level.

Mr. KILDEE. You haven't seen any of that?

Mr. BARLOW. No.

Mr. KILDEE. If these requests were to increase or take place, which Bureau subdivision would handle that?

Mr. HALLET. Mr. Chairman, those requests for a certificate of Indian blood would go to the agency office and then, I believe, from there to the area office. Those would be the two offices that would be involved in that particular effort.

Mr. KILDEE. The agency office and the area office?

Mr. HALLET. Yes.

Mr. KILDEE. And, from the area office?

Mr. HALLET. That would be it unless there is an appeal. I am not so sure on the specific process of an appeal at this point. Probably I would defer to Mr. Reeser on the appeal process.

The first level of appeal is the area office. The second level would be the Office of the Commission. But, the agency superintendent has the authority to sign off on the certificate of Indian blood.

Mr. KILDEE. What is the state of the Bureau records which contain this information? Does this condition vary from tribe to tribe? What attempts are being made to make sure that what records do exist are kept intact and preserved?

I am asking this primarily because with the 506 forms will be put a greater burden on parents to prove their eligibility or their children's eligibility. Of course, it is important for many reasons to

have accurate records kept by the tribes. This is just one of the reasons.

Mr. HALLET. The status of the records of various tribes in my opinion range, would range from very good—I know, for example, my tribe, the Red Lake Band of the Chippewa Indians maintains a fairly complete and current enrollment of individuals within that tribe. Almost monthly or whenever the council meets, there are applications made for enrollment in that particular tribe.

I am aware that occurs at a number of other tribes as well. In some tribes, however, the roll has not been maintained for decades. It is in those particular cases that the involvement of the Bureau in tracing genealogical records becomes a very extensive effort.

Mr. KILDEE. Is there anything that the BIA and/or the Congress can do to assist tribes in bringing up to date and maintaining their records, having them, of course, make the decision who would go on the records?

Economic conditions might be one of the reasons why the records are not kept up to date. There may be a variety of reasons. Is there anything that BIA or Congress could do to assist them in maintaining good records?

Mr. HALLET. We have been performing staff work for the tribes in terms of genealogical records. Those could be done for tribes that have not maintained their own tribal rolls. I have often had a dream that we would have sort of a registry of Indians, with one caution that was expressed to me was that when you establish a registry, that registry has to be approved and voted upon by the individual tribes because you infringe upon their determination of who is a member.

Mr. KILDEE. I think it is important that the decision be made by the proper tribal authorities. However, perhaps some assistance in this could be given upon if they request, especially if there are, as you say, some tribes where there has not been an update of those records for many years.

With increasing Indian awareness both on the part of the Indians, and hopefully, on the part of the Federal Government and non-Indians, this question of rolls becomes very important. I would like to have the BIA think about perhaps some way to really assist the tribes.

This is really a tribal decision as to who is on the rolls. However, if there is something that could be done to assist them, I certainly would be interested in that.

Mr. BARLOW. Mr. Chairman, I can give you a concrete example. Mr. Hallet mentioned the Chippewa. Even the Chippewa people left the White Earth region of Minnesota because of population pressures and other reasons they came west and into North Dakota. The Federal Government did establish a reservation for them at Turtle Mountain. But, one band of the Chippewa people refused this generous offer of the Federal Government and continued westward into Montana under Little Shell.

Some of these people in Montana were given individual allotments. It is a rather unusual arrangement. But, when it came time to determine if the descendants of these Chippewa people were eligible for higher education grants, for example, where you had to

be one-quarter blood, we were hard-pressed to make this determination.

So, Congress initiated an action that really helped in the thirties when they sent out Dr. RowCloud to establish what we now call the RowCloud list. These people in Montana now do not have a reservation, but they are on this list. We can refer to that. The records are kept on the Turtle Mountain Indian Reservation. But, it certainly did expedite the process of determining their eligibility and it was very helpful.

I think that is one example where the Federal Government might once again consider doing some of these types of things.

Mr. MILLS. Mr. Chairman, we have an on-going process in our Tribal Government Service Division now in the Bureau. We will look at that though to see if we can maybe strengthen that a bit.

Mr. KILDEE. I think that is something we can have dialog on. We are trying to discharge our moral and legal and treaty obligations with the Indians of this country. I am personally interested in discharging those moral, legal and treaty obligations.

We have not in the past had a great record on that. I think in the future we will try to improve upon that record.

Mr. BARLOW. Mr. Chairman, to come back to this 506 form, it is our understanding that the information that is called for on this form may preclude the agency or the area from certifying just on the basis of the information that is on that form. It would leave too many unknown kinds of information that would be necessary for the Bureau to certify.

Mr. KILDEE. The 506 form is, in itself, a problem?

Mr. BARLOW. Right.

Mr. KILDEE. Counsel? Mr. Erdahl?

Mr. ERDAHL. No questions.

Mr. LOVESEE. Mr. Barlow, would you be more specific on that please? What information on the 506 form would complicate the issue?

Mr. BARLOW. I am not saying it would complicate it insofar as it would lack sufficient information. In other words, the information on the 506 form itself may not be sufficient for the agency or the area to make the determination as to whether or not the student in question was eligible. There would probably have to be a great deal of research and followup on that.

Mr. LOVESEE. You mean to trace that individual?

Mr. BARLOW. Right.

Mr. LOVESEE. Assistant Secretary Mills, in what division will the responsibility for fully providing this information or this technical assistance to individuals reside?

Mr. MILLS. This would be under the Commissioner. Of course, that would be as mentioned earlier at the agency level. In most cases, the larger agencies have a shop that covers enrollment. The smaller agencies have somebody designated to review that. But, that would be under the Commissioner's responsibility and would come under the Tribal Government Services enrollment sections of the area.

Mr. LOVESEE. Has anything been done to expedite the activity in the field or heighten awareness of field individuals to distinguish these requests from any other requests that come in?

Mr. MILLS. I am not aware of any of them, of any specific request.

Mr. HALLET. I am not either, counsel.

Mr. LOVESEE. Were you consulted by OIE in this matter prior to the decision being made?

Mr. HALLET. I was not.

Mr. MILLS. I was not.

Mr. LOVESEE. Mr. Barlow?

Mr. BARLOW. No, sir.

Mr. LOVESEE. Thank you.

Mr. KILDEE. Mr. Mills, is the Bureau planning to close Stewart Indian School in Nevada or Fort Sill Indian School in Oklahoma?

Mr. MILLS. Mr. Chairman, these two schools were recommended to be closed. I might let Mr. Lavis elaborate on that a little more. Mr. Lavis seems to be the gentleman who has a record for closing schools. I say that only in jest, Mr. Chairman.

Mr. KILDEE. You receive chrome plated shovels for opening a school. What do you receive when you close a school?

Mr. LAVIS. I don't think I can comment on the record. The answer to that question is yes. As a part of the process by which the President directed all departments to reduce 1981 funding we did propose closing Fort Sill in Oklahoma and Stewart in Nevada. That was a part of a study that had been ongoing in the department and instigated between both the Assistant Secretary of PBA and the Assistant Secretary of Indian Affairs.

That study recommended the closing of five schools; two of which, Chilocco and Seneca, Congress mandated last year as a part of the fiscal year 1981 appropriations act; Fort Sill and Stewart and Mount Edgecumbe in Alaska. The reason we did not include Mount Edgecumbe in this process of reduction in funding was simply at this time we had no alternative for the students in Mount Edgecumbe.

Mr. KILDEE. So, you then propose to close both Stewart and Fort Sill?

Mr. LAVIS. Yes, that is our recommendation.

Mr. KILDEE. Was that recommendation based upon primarily fiscal or educational grounds?

Mr. LAVIS. I think it is a combination of both, Mr. Chairman. Certainly the issues that have dogged the department on the question of the schools have been fiscal and in terms of costs per student, the high costs to maintain facilities that are not being utilized and the cost-benefit ratio.

But, the larger issue, Mr. Chairman, is simply a decision on our part that we have got to finally address the longstanding question of getting our kids closer to home into day schools so they have the benefit of an integrated family life of living with their parents.

Almost 48 percent of our children, Mr. Chairman, are boarded away from home. I think that is an intolerably high figure. I think this administration wants to begin to address that. The largest number of people away from home are off reservation students.

So, in terms of the financial aspect that was a primary consideration, but the most overall consideration is an educational one. That is our judgment that the education of Indian children are better if they are closer to home in their own schools.

So, that is the direction we are going.

Mr. KILDEE. Have you done any formal studies of the impact of these closings upon the community and the education of the children?

Mr. LAVIS. Well not so much—we understand the impact. In many cases, it is economic because many of the employees are in the surrounding area and certainly the closing of the school has an adverse impact on their employment opportunities. But, I find it rather interesting that in closing Chilocco and Seneca that our Bureau at a tremendous cost in terms of manpower and time found 19 open basic positions which employees of Chilocco and Seneca could take advantage of in closing those schools. Yet, only two accepted the positons; the rest thinking that somehow the good fairy is going to come and save those two schools. That is just not going to happen.

So, we are making every effort to minimize the impact and we will do the same thing in dealing with Fort Sill.

We do not want to overestimate or underestimate the problems in that regard. But, let me give you an example at Stewart. Most of these kids, there are approximately 425 kids at that school—it is a high school—almost two-thirds of them, maybe 90 percent, are going to school there and their home is in Arizona.

Now, we have a school at Riverside in California, Sherman, which is a beautiful off reservation school and it is a first-rate facility and fully capable of assimilating all of those kids. That will bring them closer to home, even though it is still away from their home State. So, only 27 kids in the balance are in from Nevada.

So, while the impact is going to be heavy on the employees, I think the long-term interest is in the best interest of those kids.

Mr. KILDEE. When you closed Chilocco last fall, the parents were told that their children——

Mr. LAVIS. We haven't closed Chilocco yet. We announced the closing. Congress mandated it for June 15.

Mr. KILDEE. When it was announced last fall, parents were told that Fort Sill could absorb and enroll those children. What has been the reaction of those parents now that you have proposed to close Fort Sill? Aside from the fact that they may object to that, how do they feel about being moved from one to another, and then having Ft. Sill closed also?

Mr. LAVIS. Mr. Chairman, we sent out a memorandum to the area office and indicated at that point in time the preference: We would give immediate priority preference to those students who wanted to go to Fort Sill and Riverside or Sequoyah that were enrolled in Chilocco. Not one of those parents has chosen Fort Sill for their children.

So, the impact on the Chilocco by closing Fort Sill is zero. The impact at Fort Sill is great. I am not going to deny that. But, Riverside can accommodate them easily and certainly Sequoyah, if they are to go to Sequoyah.

Mr. KILDEE. Now, if the children don't go to Riverside, is the school system near their home capable of absorbing these various students?

Mr. LAVIS. On the basis of the study, and I have no personal knowledge of this, but on the basis of the study, yes. The people

who study the problem are convinced that there is plenty of space available for students to attend either public school or a BIA school if they so choose.

Mr. KILDEE. You have surveyed this carefully to determine if this finding is correct?

Mr. LAVIS. Yes. I am going to be very candid on the record that there is a great deal of criticism by Oklahoma tribes on the capacity and responsiveness of the Oklahoma school systems to meet their needs and that is of concern to us.

But, in terms of the BIA schools, yes, there is enough space to accommodate those students. But, we do run the risk of some of those students deciding not to go to school at all. But, when you weigh all the tradeoffs here in terms of how you weigh the decision, it is still whether the long-range interest is to get those kids closer to home as best we can.

Mr. KILDEE. I certainly would hope you would take a role in the efforts to make sure that whatever is done, there aren't a group of students who decide not to go to school at all. That would be certainly tragic.

Mr. LAVIS. Yes.

Mr. KILDEE. Mr. Barlow, what do you feel the educational consequences of these closings will be?

Mr. BARLOW. Mr. Chairman, the investigation that we conducted indicates that there is room to absorb the students from the schools that are being closed. My major concern, however, is that I question if we have truly done everything necessary as we investigate and examine the impact on the social, and the economic, and the political ramifications affecting the Indian people.

The Indian people certainly do look at an educational institution from the standpoint of the educational services that it provides. But, the Indian people also look at these educational institutions from the economic standpoint. Again, this represents, how shall I say this, our share of the economic pie. It is jobs.

We talked about Indian preference. Our people must have work. I am concerned that whether or not we have done all that we should have to look at the alternatives and the options. Now, it is true the Bureau's official policy is to educate the children as close to their homes as possible. I am in favor of this. I am promoting this. I am doing all I can to carry this out.

But, I don't see a plan coming on line that says, OK, on the Navajo Indian reservation where most of our boarding students are, I would like to begin planning for 100 day schools with enrollments of 100 each. The construction costs approximately is $100 million. So, I would like to take up the slack here, I guess, as we begin to close these schools with a positive definite plan of day schools or whatever the people prefer near their homes. This is the concern that I have.

I have just completed a plan for the closing of Stewart and Fort Sill. It appears to us that we can, without too much adverse impact, close Stewart Indian School for the coming school year. Mr. Lavis didn't mention this, but the facilities out there leave a lot to be desired. They are unsafe. They are hazardous. To replace them would be very expensive.

In the case of Fort Sill, I think the impact is such that I would be very cautious about attempting to close that in time for the coming school year. I don't see how we can take up the impact of placing all of the employees, the students, and so on. But, the plan is coming forward and I don't think it has reached the Assistant Secretary's office yet.

Mr. KILDEE. I cannot look at each school from here in the Congress and make the decisions that you in the executive branch have to make. However, I would think that when you do make a decision such as closing a school, that you should look at the various facets as they affect the Indian community; the educational facet, the social facet, the Indian economy facet.

I think that these are things that should be really mulled over; not in isolation, but together. As I say, you have to make those decisions, but I think that one doesn't look at the various facets in isolation because they interrelate. You have a societal structure that has been in place for a number of years because these schools have existed.

You will want to look at the consequences of the affect upon that societal structure. I really don't know what the answer may be, but I think those are the things you must look at carefully when you make those decisions.

Counsel.

Mr. LOVESEE. Mr. Chairman, let me ask a few questions as to specifics. How many students were at Chilocco prior to announcement of the closing?

Mr. LAVIS. Prior to the closing?

Mr. LOVESEE. Prior to the announcement.

Mr. LAVIS. At least approximately 195.

Mr. LOVESEE. How many are currently enrolled at Ft. Sill?

Mr. LAVIS. One hundred forty-five.

Mr. LOVESEE. How many are currently enrolled at Riverside?

Mr. LAVIS. I would have to get that. I don't know those figures at the moment.

Mr. LOVESEE. Do you happen to have the figures for the capacity for Riverside?

Mr. BARLOW. Yes, we have them. I can furnish them for the record. I just neglected to bring those kinds of statistics with me.

Mr. LOVESEE. Originally, there were two dormitories planned to be built at Riverside. I am aware of one being built. Was the second completed or even started?

Mr. LAVIS. I am not sure. You may be confused. There are two dormitories in existence, but are not being used. We are going to refurbish them. We plan to do that. They will be ready the next school year to accommodate particularly the Stewart children.

Mr. LOVESEE. In fiscal 1976, weren't funds appropriated for a new one to be built behind the old dormitories?

Mr. LAVIS. Yes.

Mr. LOVESEE. Originally, there were to be two, but there was only one built, because the funds were never appropriated for the second. Am I correct in that?

Mr. LAVIS. Yes. They have just finished a massive reconstruction and a beautiful fine arts area, a swimming pool. It is a beautiful school. I am sure you have seen it.

Mr. LOVESEE. Yes. I have seen it several times. The last time I was there, they were in the process of remodeling the dormitories. Since it is a high school situation, they were going from four people in a room, to two persons in each room. Are you aware of whether the remodelling project was completed to go from four to two?

Mr. LAVIS. That I cannot answer.

Mr. LOVESEE. I am wondering whether the capacity at Riverside would be such as to be able to absorb students from Chilocco and Fort Sill without creating a crowded condition. This would either lead to some students not being able to attend or a reversion to more than the optimal number being forced into a room.

Mr. LAVIS. Well, I would be happy to give that information to you. I think you have done that study. I can also give you a list of the students who have indicated a preference from Chilocco and Seneca to go to Riverside. Of course, Seneca is elementary and Chilocco is high school. We can give you the mix.

Mr. LOVESEE. Would you include the ramifications of the presence of the Fort Sill students if they elected to go to Riverside.

Mr. LAVIS. Yes.

[Information referred to above follows:]

RIVERSIDE INDIAN SCHOOL

Two new dormitories, housing 64 students each, two per room have been completed. Six of the seven cottage dormitories, housing 26 or 36 students each have been remodeled. If the seventh cottage, Delaware Lodge, is remodeled also (for 26 students), Riverside can serve up to 330 students, an increase of 95 students over the 1979–80 student count.

Students from Chilocco and Fort Sill will be given priority in filling the vacancies at Riverside. To date, however, no applications have been received from Chilocco or Fort Sill students.

Mr. LOVESEE. As a point of clarification, the Bureau's recommendation that is going forward to you, Assistant Secretary Mills, is to close these schools at the end of this school year, unless some outside force or outside action is taken. Is that correct?

In other words, it is not to make a recommendation to the Congress to close them. It is to actually close them unless something happens.

Mr. LAVIS. No, I think that is incorrect, Counsel. We have sent forth budget amendments to close both Fort Sill and Stewart. Both Appropriations Committees have them. What Mr. Barlow has been directed to do is prepare a document to close those schools in the event that decision is concurred in. We did the same for Chilocco and Seneca because there are questions of land, there are questions of personal and real property.

Chilocco has an operating oil well and also has cattle, horses, farm equipment. We had to take certain steps to make sure the disbursal of those items are in accordance with Federal statute. We also have questions as to handling personnel, et cetera.

Now, in response to the basic question of when do we propose to close the schools. One, we have made a general decision or at least a tentative decision to close Stewart or at least not open it in the fall. We could continue the program up until maybe September 1 to give all members, employees, there a chance to relocate jobs so that they can move from one job to the next without losing any salary or wages.

The question of Fort Sill, however, is an open question to the Assistant Secretary. We have asked the Director there to give us his best estimate as to whether or not it would be wiser to give us another school year for longer leadtime to handle it because he is also handling Chilocco at the same time.

The decision is one the assistant secretary has to make.

Mr. KILDEE. Thank you. We deeply appreciate your presence and your testimony here this morning. We would like to submit further questions in writing for the record. We will keep the record open for that purpose.

One responsibility that we do hold in common, and to which I think we have a deep obligation, is to provide services to the Indians. This obligation binds us morally, binds us legally, binds us by the treaties which the U.S. Government has signed with the various Indian tribes.

I take those moral obligations very, very seriously, as I know you take the various laws enacted in the past to assist Indians in this country very seriously. I heavily stress the importance to the U.S. Government of fulfilling its treaty obligations. These treaty obligations are real. They were entered into between the United States of America and sovereign tribes.

I think that the relationships that our Government has with those tribes is a unique type of relationship. To the degree that we recognize it is unique, to that degree I think we will provide those services. Particularly, when one reads the treaties one sees almost universally, if not universally, the mention of education.

I think that this government, the United States Government, which both of us, all of us, are sworn to serve, really has to insure that it is providing the highest quality of education to the Indians of this country.

Numerically, I do not have a large number of Indians in my own district. However I have always felt that one of the shameful aspects of our history has been the way our government has treated the Indians of this country. One can never take away the pain that has been caused in the past by our action or inaction, but one can hope that it will never be repeated.

Sins of omission are as bad as sins of commission. What we fail to do under our moral, legal, and treaty obligations for Indians are serious sins of omission. I take that very, very seriously and I know you do. So, whenever we meet, we meet in the spirit of cooperation to serve the Indians of this country.

I would like to at this point to indicate one thing. Since coming to Congress I have enjoyed working with Rick Lavis. He has been a fine person to work with, a person whose dedication is unquestioned, and whose ability is enormous. I regret the fact that he is leaving the BIA in the middle of May. We will miss you. The Indians of this country will miss you. I wish you well in the future.

Mr. LAVIS. Thank you. I appreciate that very much. It has been enjoyable working with both of you and counsel on this very important subject, Indian education.

Mr. KILDEE. The committee will stand adjourned.

[Thereupon, at 11:10 a.m., the hearing in the above-entitled matter was adjourned.]